

Memorandum

Subject: LUMP-SUM LEAVE PAYMENTS UPON RETIREMENT

From: Nicholas J. Oganovic

To: Directors of Personnel

Executive Registry

Date: 69-4695/1

In Reply Refer To:

Your Reference:

Several amendments to the Civil Service Retirement Law have been approved by the Congress and forwarded to the President for signature. Several questions have arisen, in anticipation of the enactment of the law, concerning the tax implications of the timing of payments for unused annual leave for Federal employees who would retire before November 1, 1969, in order to take advantage of the latest cost-of-living increase.

A number of inquiries have been received asking about the possibility of delaying lump-sum leave payments until after January 1, 1970, thereby placing the payment in a different tax year.

We have received an advisory opinion from Mr. Harold T. Swartz, Assistant Commissioner (Technical), Internal Revenue Service, stating that it would be improper for the Federal Government to purposely delay lump-sum leave payments solely in order to minimize the tax consequences for employees retiring before November 1, 1969 (copy attached). Please be guided accordingly.

Enclosure

memorandum

OCT 10 1969

to: Director, Personnel Division

from: Assistant Commissioner (Technical)

subject: Lump Sum Retirement Payments

This is in response to your memorandum of October 7, 1969 concerning the timing of payments for unused annual leave of Federal employees who plan to retire before November 1, 1969 in order to take advantage of the latest cost-of-living increase.

It is understood that many of these employees would prefer, for tax purposes, to defer receipt of their lump sum payments to calendar year 1970. You state, however, that under normal processing most of these payments will be made shortly after November 1 and that special authority would be required to delay them until 1970.

You seek our opinion on the implications of this from a tax administration point of view and ask specifically whether delaying these payments to calendar year 1970 would place these Federal employees in an advantageous or disadvantageous tax position compared to private sector employees in similar circumstances.

The Federal income tax rules applicable in this regard would be the same for both classes of employees. If the employee, whether in the Federal or private sector, were to be given an option of receiving immediate payment or deferring receipt until 1970, we would hold him to be in constructive receipt of the amount and it would be includible in his income for 1969. On the other hand, if the employee were given no real choice in the matter and could not actually obtain payment until 1970, the amount would be includible in his income in the later year.

As tax administrators, we would, however, view any special arrangement to delay such payments as a questionable means of tax avoidance, whether undertaken by the Federal Government or by an employer in the private sector. For this reason, we feel that it would be improper for the Federal Government to purposely delay these payments solely in order to minimize the tax consequences for employees retiring before November 1, 1969.

Harold T. Swartz

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